CepatWawasan Group Bhd v Datuk Lo Fui Ming & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W–02–643 OF 2004
ABDUL AZIZ, MOHD GHAZALI JJCA AND RAMLY ALI J
6 SEPTEMBER 2004

Companies and corporations — Meeting — Extraordinary general meeting — Adjournment — Chairman's power to adjourn — Whether could be exercised without consent of meeting

An extraordinary general meeting of the appellant company ('the Company') had been convened to be held on 21 May 2004 ('the first EGM') on the requisition of the first, second and third respondents for the purpose of passing resolutions for (a) the removal of Tan Sri Datuk Chai Kin Kong, Datuk Chua Tiong Moon and Chai Kim Chong as directors of the Company; (b) the appointment of the first and fourth respondents and one Chen Syn Fook @ Charles as directors; and (c) the removal with immediate effect of all directors of the company who might be appointed at any time between the date of the requisition (23 March 2004) and the date of the first EGM. On the morning of 21 May 2004, before the first EGM commenced, the Company was served with an *ex parte* order obtained by one Chai Kin Loong, the brother to the said Tan Sri Datuk Chai Kin Kong, in an action in the Seremban High Court. It *inter alia* restrained the first, fourth and six respondents from exercising voting rights in respect of some of their shares in the Company at the first EGM until disposal of the Seremban action. The chairman adjourned the first EGM without obtaining the consent of the meeting. On 15 June 2004 the first, fourth, fifth and sixth respondents issued a notice calling another extraordinary general meeting of the Company to be held on 14 July 2004 ('the second EGM'). On 28 June 2004 the *ex parte* order in the Seremban action was set aside. On 30 June 2004 the directors fixed the adjourned first EGM for 26 July 2004. On 1 July 2004 the Company filed an application by originating summons in the High Court in Kuala Lumpur seeking declarations, *inter alia*, that the first EGM was validly adjourned and that the second EGM would be an invalid meeting. On 6 July 2004, the Company filed a summons in chambers to restrain the holding of the second EGM or the implementation of resolutions passed by it. Both the applications were dismissed on 6 July 2004. This was the company's appeal against that decision. The core issue in this appeal was whether the first EGM was validly adjourned. There was also an application by one Ho Hee Chung ('the intervener') to be added as a respondent in the appeal. The intervener had earlier filed an oppression petition together with an application for an injunction to, *inter alia*, restrain the six respondents here and two other persons from moving any resolutions with a view to appointing them to the board of directors of the Company. Counsel for the intervener, fearing that any order might be construed as barring his injunction application, sought a qualification of that order for his client's benefit.

Held, dismissing the appeal:

(1) (**per Abdul Aziz JCA**) It is perfectly logical and in accord with common sense that where a chairman of a meeting is governed by a rule that requires the consent of the meeting to an adjournment, then if at all the chairman is to have power to validly adjourn the meeting without consent, it must be where it is not possible to obtain the consent.

(2) (**per Abdul Aziz JCA**) The chairman did not seek the consent of the meeting because, according to him, he was apprehensive about the validity of what the meeting might decide as to adjournment in view of the *ex parte* order affecting the voting rights of the first, fourth and sixth respondents. Such an apprehension was viewed as not a circumstance that conferred power on the Chairman to adjourn without the consent of the meeting. Therefore, the first EGM was not validly adjourned (see para 18).

(3) (**per Abdul Aziz JCA**) Since the court had ordered that the second EGM should be held within 14 days, for the avoidance of doubt, it is necessary, in order to allay the fears of Ho Hee Chung, to declare that the order as to the holding of the second EGM was not intended to bar the making of any order that 'any court may think fit to make, whether under Ho Hee Chung's oppression petition or under any other action, to restrain the second EGM, or the making of any order ancillary to such order (see para 24).

(4) (**per Mohd Ghazali JCA** dissenting only on the qualification of the order in respect of the intervener/respondent Ho Hee Chung) The result of the appeal in this case had no effect upon any remedy that Ho Hee Chung might seek in the High Court in his application under s 181 of the Companies Act 1965 and such no qualification to the orders was necessary. The court should not act in vain by making unnecessary qualifications that may be perceived as directions from the court (see para 26).

[**Bahasa Malaysia summary**

Mesyuarat agung luar biasa syarikat perayu ('syarikat tersebut') telah dipanggil untuk diadakan pada 21 Mei 2004 ('EGM pertama') atas rekuisisi responden pertama, kedua dan ketiga untuk meluluskan resolusi bagi (a) mengeluarkan Tan Sri Datuk Chai Kin Kong, Datuk Chua Tiong Moon dan Chai Kim Chong dari menjadi pengarah syarikat tersebut; (b) melantik responden pertama, keempat dan seorang Chen Syn Fook @ Charles sebagai pengarah-pengarah; dan (c) pengeluaran dengan segera semua pengarah syarikat tersebut yang mungkin dilantik pada bila-bila masa di antara tarikh rekuisisi (23 Mac 2004) dan tarikh EGM pertama. Pada pagi 21 Mei 2004, sebelum EGM pertama bermula, syarikat tersebut diserahkan dengan perintah *ex parte* yang diperolehi

oleh seorang Chai Kin Loong, adik kepada Tan Sri Datuk Chai Kin Kong tersebut, dalam satu tindakan di Mahkamah Tinggi Seremban. Ia *inter alia* menahan responden pertama, keempat dan keenam dari menggunakan hak mengundi berkenaan dengan saham-saham tertentu mereka dalam syarikat tersebut di EGM pertama sehingga penyelesaian tindakan di Seremban. Pengerusi syarikat tersebut menangguhkan EGM pertama tanpa memperoleh kebenaran mesyuarat Pada 15 Jun 2004 responden pertama, keempat, kelima dan keenam mengeluarkan satu notis memanggil satu lagi mesyuarat agung luar biasa syarikat tersebut diadakan pada 14 Julai 2004 ('EGM kedua'). Pada 28 Jun 2004 perintah *ex parte* yang diperoleh di dalam tindakan di Seremban tersebut telah diketepikan. Pada 30 Jun 2004 pengarah-pengarah syarikat tersebut menentukan EGM pertama yang ditangguhkan diadakan pada 26 Julai 2004. Pada 1 Julai 2004 syarikat tersebut memfailkan permohonan melalui saman pemula di Mahkamah Tinggi Kuala Lumpur untuk deklarasi, *inter alia*, bahawa EGM pertama ditangguhkan dengan sah dan bahawa EGM kedua akan menjadi mesyuarat yang tidak sah. Pada 6 Julai 2004, syarikat tersebut memfailkan saman dalam kamar untuk menahan dari mengadakan EGM kedua atau implimentasi resolusi yang akan diluluskan. Kedua-dua permohonan ditolak pada 6 Julai 2004. Ini adalah rayuan syarikat tersebut terhadap keputusan tersebut. Isu yang penting di dalam rayuan ini adalah sama ada EGM pertama ditangguhkan secara sah. Terdapat juga suatu permohonan daripada Ho Hee Chung ('pencelah tersebut') untuk dimasukkan sebagai responden di dalam rayuan tersebut. Pencelah telah sebelum ini memfailkan suatu petisyen penindasan bersama-sama suatu permohonan untuk suatu injunksi, antara lain, untuk menyekat ke-enam-enam responden di sini dan dua orang lain daripada membuat apa-apa resolusi yang bertujuan untuk melantik mereka kepada lembaga pengarah syarikat. Peguam bagi pencelah, dalam merasa risau akan apa-apa perintah yang boleh membawa maksud sebagai menyekat permohonan injunksinya, memohon untuk kelayakan dibuat ke atas permohonan tersebut demi kebaikan kliennya.

Diputuskan, menolak rayuan tersebut:

(1) (**oleh Abdul Aziz HMR**) Ia adalah logik dan sehaluan dengan akal waras bahawa di mana pengerusi mesyuarat dikawal oleh kaedah yang perlukan kebenaran mesyuarat untuk penangguhan, kemudian jika pengerusi mempunyai kuasa untuk menangguhkan mesyuarat tersebut dengan sah tanpa kebenaran, ia mesti pada keadaan apabila kebenaran tidak boleh diperoleh.

(2) (**oleh Abdul Aziz HMR**) Pengerusi tersebut tidak memohon untuk kebenaran mesyuarat tersebut kerana, mengikut beliau, beliau khuatir mengenai kesahihan keputusan mesyuarat akan ambil mengenai penangguhan kerana terdapat perintah *ex parte* yang memberi kesan kepada hak mengundi responden pertama, keempat dan keenam. Kekhuatiran sedemikian dilihat sebagai bukan satu keadaan yang memberi kuasa kepada pengerusi untuk menangguhkan mesyuarat tanpa kebenaran

mesyuarat. Oleh demikian, EGM pertama tidak ditangguhkan dengan sah (lihat perenggan 18).

(3) (**oleh Abdul Aziz HMR**) Oleh sebab mahkamah telah memerintahkan bahawa EGM kedua patut diadakan dalam masa 14 hari, untuk mengelakkan keraguan, adalah perlu, untuk menyingkirkan ketakutan Hoi Hee Chung, untuk mengisytiharkan bahawa perintah berkenaan dengan kewujudan EGM kedua tidak bermaksud untuk menyekat pemutusan apa-apa perintah yang 'mana-mana mahkamah akan fikirkan perlu untuk dibuat, sama ada di bawah petisyen penindasan Ho Hee Chung atau tindakan yang lain, untuk menghalang EGM kedua, atau pembuatan apa-apa perintah sampingan kepada perintah tersebut (lihat perenggan 24).

(3) (**oleh Mohd Ghazali HMR** menentang hanya atas kelayakan perintah berkenaan dengan pencelah/responden Ho Hee Chung) Keputusan rayuan di dalam kes ini tidak mempunyai kesan atas apa-apa remedi di bawah s 181 Akta Syarikat 1965 dan kelayakan sebegitu tidak perlu. Mahkamah tidak harus bertindak secara sia-sia dengan membuat kelayakan yang tidak perlu yang boleh dianggapkan sebagai perintah daripada mahkamah (lihat perenggan 26).]

Notes

For cases on adjournment of EGM by chairman, see 3(1) *Mallal's Digest* (4th Ed, 2003 Reissue) para 393.

Cases referred to

Byng v London Life Association Ltd & Another [1990] 1 Ch 171 (refd)
John v Rees & Others [1970] 1 Ch 345 (refd)

Legislation referred to

Companies Act 1965 ss 144(1), (2), 145(2)

Raja Aziz Addruse (TS Lim and Janice Yap with him) (Chooi & Co) for the appellants.
Gideon Tan (Lee Noushi with him) (Gideon Tan, Razali & Zaini) for the respondents.
Gananathan a/l Pathmanathan (Bodipalar Ponnudurai Nathan) for the intervening respondent.

Appeal from: Originating Summons No D7–24–184 of 2004 (High Court, Kuala Lumpur)

Abdul Aziz JCA (delivering majority judgment):

[1] The core issue in the appeal, which was dismissed, was whether the extraordinary general meeting of the appellant company ('the Company')

which had been convened to be held at a hotel in Kuala Lumpur on 21 May 2004 ('the first EGM'), was validly adjourned. The facts were these. The first EGM had been convened on the requisition of the first, second and third respondents under s 144(1) of the Companies Act 1965 for the purpose of passing resolutions for (a) the removal of Tan Sri Datuk Chai Kin Kong, Datuk Chua Tiong Moon and Chai Kim Chong as directors of the Company; (b) the appointment of the first and fourth respondents and one Chen Syn Fook @ Charles as directors; and (c) the removal with immediate effect of all directors of the company who might be appointed at any time between the date of the requisition (23 March 2004) and the date of the first EGM. On the morning of 21 May 2004, before the first EGM commenced, the Company was served with an *ex parte* order obtained on the previous day by one Chai Kin Loong, the brother of the said Tan Sri Datuk Chai Kin Kong, in an action in the Seremban High Court. It *inter alia* restrained the first, fourth and six respondents from exercising voting rights in respect of some of their shares in the Company at the first EGM until disposal of the Seremban action. The shares affected by the injunction totalled 11,750,000 and were as follows: first respondent's, 7,505,000 shares (out of 18,294,004); fourth respondent's, 2,063,000 shares (out of 5,891,928); sixth respondent's, 2,182,000 shares (out of 4,638,833). Acting with the advice of the Company's legal adviser, the executive chairman of the Company, Tengku Dato' Kamal Ibni Sultan Sir Abu Bakar, as chairman of the first EGM, brought the *ex parte* injunction to the attention of the members present, among whom were the six respondents, and adjourned the first EGM to a date to be fixed, pending the disposal of the *inter partes* application for the injunction in the Seremban action, in spite of the proposal by a proxy for three members that a motion be put to all members for an adjournment pursuant to Art 61 of the Company's Articles of Association, which proposal the chairman rejected.

[2] According to the first sentence of Art 61:

> The Chairman may with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

[3] On 15 June 2004 the first, fourth, fifth and sixth respondents issued a notice under s 145(2) calling another extraordinary general meeting of the Company to be held at another hotel in Kuala Lumpur on 14 July 2004 ('the second EGM'). The purpose of the second EGM was to pass resolutions for (a) the removal as directors of the Company of the same three persons, namely, Tan Sri Datuk Chai Kin Kong, Datuk Chua Ting Moon and Chai Kin Chong, and also of the other two directors, namely, the said Tengku Dato' Kamal and Datuk Rahadian Mahmud bin Mohammad Khalil; (b) the appointment with immediate effect of the first, fourth, fifth and six respondents as directors of

the Company; and (c) the removal with immediate effect of any person who might have been appointed as directors between 11 June 2004 and the commencement of the second EGM.

[4] On 21 June 2004 Tan Sri Datuk Chai Kin Kong, Dato' Chua Tiong Moon and Chai Kim Chong resigned as directors of the Company.

[5] On 28 June 2004 the *ex parte* order in the Seremban action was set aside. On 30 June 2004 the directors fixed the adjourned first EGM for 26 July 2004. As far as removal of directors was concerned, although the three directors that were specifically sought to be removed had already resigned, there was still to be disposed of the resolution to remove directors who might have been appointed after the resignation of the three persons.

[6] On 1 July 2004 the Company filed an application by originating summons in the High Court in Kuala Lumpur seeking declarations, *inter alia,* that the first EGM was validly adjourned and that the second EGM would be an invalid meeting. On 6 July 2004 the Company filed a summons in chambers to restrain the holding of the second EGM or the implementation of resolutions passed by it. Both the applications were dismissed on 6 July 2004. The Company appealed to this court. On 23 July 2004 we dismissed the appeal. In dismissing the appeal we made certain orders sought by the respondents to facilitate the holding of the second EGM which, by reason of an earlier interim order of this court, was not held on 14 July 2004. One of the facilitating orders that we made was that the second EGM was to be held within 14 days of 23 July 2004.

[7] Before us, learned counsel for the Company, Raja Aziz Addruse, conceded that if we found that the first EGM was not validly adjourned, the second EGM would be a valid meeting.

[8] If the validity of the adjournment of the first EGM were to be decided by reference only to Art 61, that is to say, if Art 61 was the comprehensive law on the power of the chairman to adjourn a meeting, the adjournment of the first EGM would clearly be invalid because it was not done with the consent or on the direction of the meeting. But Raja Aziz contended that in law the chairman of a meeting of a company, in spite of the existence of an article like Art 61, has power to adjourn a meeting in certain circumstances. It is now appropriate to set out the reason given by the chairman for not seeking the consent of the meeting to an adjournment. In his affidavit dated 1 July 2004 the chairman first gave his reason why he considered that the first EGM ought not to proceed on 21 May 2004. This was in para 16(g), where he said 'to allow the first EGM to proceed on 21 May 2004 would, apart from constituting a breach of the *ex parte* order, result in the voting rights of the first, fourth and sixth defendants in respect of the 11,750,000 shares being excluded, which might otherwise have been exercisable if the *ex parte* order lapsed or was set aside'. He was, according to him, concerned to ensure that the first, fourth and sixth respondents would be able to exercise their voting

rights in respect of the affected shares and that the meeting would only proceed when they would be able to exercise those voting rights. As to the fear that to proceed with the meeting would constitute a breach of the *ex parte* order, it was clearly unfounded because the order was not directed at the meeting. Then, in para 19, the chairman gave his reason for rejecting the proposal that a motion for adjournment be put to the members, that is to say, for declining to seek the consent of the meeting to an adjournment. He said: 'This proposal was rejected by me, as the putting of a motion to the members of the [Company] would be subject to the same uncertainty caused by the *ex parte* order in the first place, namely which votes would have been entitled to be counted in the first place. The exclusion of votes which should otherwise have been included would have rendered any such resolution invalid'. He did not say that in view of the *ex parte* order, which affected only a part of the shares of the first, fourth and sixth respondents, it would have been impossible to obtain the consent of the members present to an adjournment. He merely feared that if the consent of the meeting was obtained or refused on votes which excluded the votes in respect of the affected shares, and the meeting was adjourned or proceeded with, and subsequently the *ex parte* order was set aside, so that it would be felt that the votes in respect of the affected shares could have been counted in after all, the resolution to adjourn or to proceed, if subsequently challenged, would be found to be invalid.

[9] For the law, the Company relied foremost on *Byng v London Life Association Ltd & Another* [1990] 1 Ch 171, where Art 18 of the Articles of Association of the company concerned was virtually *in pari materia* with Art 61 in this case. In that case an extraordinary general meeting of the company was to be held at Cinema 1, Barbican Centre, The Barbican, London EC2. In case those who attended could not fit into the cinema, two overflow rooms together with additional accommodation in the foyer were booked in the Barbican Centre. According to Sir Nicolas Browne-Wilkinson VC, 'The arrangements for the meeting were plainly unsatisfactory' (see p 180 F). A concise general picture of the situation obtaining on the date scheduled for the meeting was given by Mustill LJ, who described it as a 'chaotic scene' (see p 192 F–G) in which he could not even find the existence of a meeting (see p 193 D–E). This was how he described it (see p 192 D–F):

> Those who found places in the overflow rooms could not see or hear properly. The opportunity for an exchange of views and arguments between one overflow room and another, and between each room and those on the platform in Cinema 1 was virtually non-existent. Many of those in the overflow rooms were unable to carry out the registration formalities, and did not know whether and how to do so. Still others were milling around in the foyer and had not yet achieved a place in any room.

[10] It was common ground that in those circumstances no business could have been validly conducted at that meeting (see p 182 A–B).

[11] The chairman did open the meeting at 12.30pm, and after several members expressed their objection to the commencing of the meeting and made proposals as to its further conduct, the chairman started to deliver his speech, during which there were several interruptions, which were followed by the putting of various views about an adjournment. It all ended with the chairman adjourning the meeting, without the consent of the meeting, to 2.30pm at the Cafe Royal, where another room had earlier been booked as a precaution in case even the provisions for overflow at the Barbican Centre should prove inadequate.

[12] Three questions arose in that case: First, whether there was a meeting; second, whether the chairman had power to adjourn without the consent of the meeting in view of Art 18; third, whether, if he had the power, it was validly exercised by adjourning the meeting to the Cafe Royal in the afternoon. It was the second question that was relevant to the core question in the appeal before us.

[13] Sir Nicolas Browne-Wilkinson VC dealt with that question at pp 186 A to 188 D. Raja Aziz highlighted certain statements and passages from those pages to argue that since, at common law, it is a chairman's duty to regulate the proceedings so as to give all persons entitled a reasonable opportunity of debating and voting, he has the power at common law to adjourn the meeting if the purpose of the adjournment is to enable all persons entitled to debate and vote. Since the adjournment in this case was to enable the first, fourth and sixth respondents to debate and vote at such time as they would no longer be restrained from exercising their voting rights, so the argument went, it was within the power of the chairman, notwithstanding Art 61 which required the consent of the meeting to an adjournment. But that was not what the decision in those pages laid down as to the position in law with the existence of the Art 18 in that case. As to that, this was what the learned judge, after considering the position at common law, said at p 187 G–H:

> In my judgment art 18 regulated the chairman's powers of adjournment to the extent that its machinery is effective to cover the contingencies which occur. Therefore if the circumstances are such that it is possible to discover whether or not the meeting agrees to an adjournment, art 18 lays down a comprehensive code. But if the circumstances are such that the wishes of the meeting cannot be validly ascertained, why should art 18 be read as impairing the fundamental common law duty of the chairman to regulate proceedings so as to enable those entitled to be present and to vote to be heard and to vote?

[14] Later on, at p 188 D, the learned judge concluded his deliberations by saying:

> Accordingly, I reach the conclusion that in any circumstances where there is a meeting at which the views of the majority cannot be validly ascertained, the chairman has a residual common law power to adjourn 'so as to give all persons entitled a reasonable opportunity of voting' and, I would add, speaking at the meeting.

[15] We understood those passages to mean that Art 18 (in our case Art 61) must be complied with, that is to say, the consent of the meeting to an adjournment must be obtained, if it is possible to discover whether or not it agrees to an adjournment. In that event what the Article lays down, namely, the need for consent, is a 'comprehensive code', that is to say, it excludes any exception available under the common law. Even though the chairman has a 'fundamental common law duty … to regulate proceedings so as to enable those entitled to be present and to vote to be heard and to vote', and he believes that that objective cannot be attained unless the meeting is adjourned to some other time or date or place, he can adjourn the meeting without the consent of the meeting only if it is not possible to discover the wishes of the meeting. If it is possible to ascertain the wishes of the meeting, the chairman must act according to them, so that if the meeting does not consent to an adjournment, the meeting must proceed, even though there may be risks of whatever nature in proceeding. The wisdom in proceeding or not proceeding is a matter to be left entirely to the meeting if its wishes can be ascertained.

[16] Woolf LJ, at p 195 B–C, declared to the same effect:

> … because of the conditions which existed on 19 October 1988 it was clearly impossible to obtain the consent of the meeting which was then taking place at Cinema 1 in the Barbican and it was only because of this inability to ascertain the wishes of the meeting in accordance with art 18 that Mr Dawson had an exceptional and residual discretion to adjourn without the consent of the meeting which would normally be required. If it had been possible to obtain the views of the meeting then Mr Dawson could only have adjourned the meeting if he complied with art 18.

[17] It is perfectly logical and in accord with common sense that where a chairman of a meeting is governed by a rule that requires the consent of the meeting to an adjournment, then if at all the chairman is to have power to validly adjourn the meeting without consent, it must be where it is not possible to obtain the consent.

[18] As has been seen, it was not because it was not possible to obtain the consent of the meeting in this case that the Chairman did not seek its consent. He did not seek the consent of the meeting because, according to him, he was apprehensive about the validity of what the meeting might decide as to adjournment in view of the *ex parte* order affecting the voting rights of the first, fourth and sixth respondents. Seen in the light of the decision in the *Byng* case, such an apprehension, in our view, was not a circumstance that conferred power on the chairman to adjourn without the consent of the meeting. Therefore in the circumstances he had no power to adjourn the meeting and the meeting was not validly adjourned. Moreover, had the chairman consulted the meeting about the adjournment he would have discovered that his fears were insubstantial. This was what the first respondent said in sub-paras (f) and (g) of para 4 of his affidavit dated 7 July 2004:

(f) It should also be noted that notwithstanding the *ex parte* order, myself, the fourth and sixth defendants are entitled to vote with our remaining shares at the EGM. As requisitionists, we strongly feel that it is important for the members to vote and decide who should be entrusted to manage their company.

Now produced and shown to me is a copy of the voting form distributed at the first EGM wherein myself, the fourth and sixth defendants were willing to vote our remaining shares, exhibited hereto and marked as 'LFM–1'.

(g) Any unfairness as a result of the *ex parte* order is towards the three of us, ie myself, the fourth and sixth defendants. Notwithstanding the unfairness towards us alone and considering the shares injuncted amounted to a small portion of the [Company's] issued and paid-up capital, the chairman unilaterally decided to adjourn the first EGM without consultation with the members at the first EGM.

[19] Although what the first respondent said in those paragraphs might have been said with the question of voting on the resolutions foremost in mind, it would equally apply to the question of voting on an adjournment.

[20] The Company also relied on *John v Rees & Others* [1970] 1 Ch 345, a case concerning an unincorporated political association, not a company. Raja Aziz cited this passage at p 382 H–383 A:

> If then, the chairman has this inherent power and duty, what limitations, if any, are there upon its exercise? First, I think that the power and duty must be exercised bona fide for the purpose of forwarding and facilitating the meeting, and not for the purpose of interruption or procrastination. Second, I think that the adjournment must be for no longer than the necessities appear to dictate. If the adjournment is merely for such period as the chairman considers to be reasonably necessary for the restoration of order, it would be within his power and his duty; a longer adjournment would not.

[21] That passage was relied on to propose that so long as an adjournment is decided upon in good faith and is for no longer than is necessary, the chairman has power to adjourn a meeting without its consent. But that passage was concerned with the limitations upon the exercise by the chairman of his 'inherent power and duty' to adjourn — with, that is, the correctness of and wisdom in the manner in which the power and duty are exercised — where he has the inherent power and duty to adjourn in the first place. The question whether the chairman has that inherent power and duty was dealt with in the preceding passage, at p 382 D–G, and that passage Raja Aziz did not cite. It should be sufficient to quote only the first part of it:

> The first duty of the chairman of a meeting is to keep order if he can. If there is disorder, his duty, I think, is to make earnest and sustained efforts to restore order,

and for this purpose to summon to his aid any officers or others whose assistance is available. If all his efforts are in vain, he should endeavour to put into operation whatever provisions for adjournment there are in the rules, as by obtaining a resolution to adjourn. If this proves impossible, he should exercise his inherent power to adjourn the meeting for a short while, such as 15 minutes, taking due steps to ensure so far as possible that all present know of this adjournment.

[22] That passage means that the chairman's inherent power to adjourn a meeting is only available to be exercised when it 'proves impossible' 'to put into operation whatever provisions for adjournment there are in the rules, as by obtaining a resolution to adjourn'. If it is possible to obtain a resolution to adjourn, the chairman does not have the inherent power to adjourn and if he adjourns without a resolution the adjournment is wrong even if done in good faith and for a reasonably necessary time.

[23] In the High Court, in dismissing the Company's originating summons, the learned judge ordered that the costs be borne by the directors personally. We did not know what considerations the judge took into account in placing on the directors personal liability for costs, because we did not have his grounds of decision, but before us the respondents' counsel submitted that the directors were using the Company as plaintiffs in bringing an action that was intended to keep them in power. The implication was that it was actually the directors' action and not the Company's. Raja Aziz for the Company submitted that it was not fair to the directors to be made to bear the costs because they had not been heard on the question of costs, and they had no opportunity to be heard because the question of making them liable for costs arose only in the respondents' written submission on the morning of the hearing in the High Court. As for the chairman, Raja Aziz submitted that he ought not to be blamed for adjourning the meeting because he acted on legal advice. We agreed with Raja Aziz that it was not fair to make the directors personally liable for costs in the High Court and so, while dismissing the Company's appeal, we ordered that the High Court costs be borne by the Company and not by the directors.

[24] We had allowed, no party objecting, one Ho Hee Chung to be added as a respondent in the appeal. He had filed against the Company, the six respondents here and two other persons, an oppression petition under s 181 of the Companies Act 1965 together with an application for an injunction to, *inter alia,* restrain those eight persons from moving any resolutions with a view to appointing them to the board of directors of the Company. At the outset Ho's counsel had explained to us that Ho's purpose was to ask, should we find the first EGM to have been validly adjourned, that it be further adjourned until the determination of his injunction application. Since we found that the adjournment of the first EGM was not valid, there was no longer any question of asking for its further adjournment. But since, as has been mentioned, we ordered, as one of several facilitating orders, that the second EGM should be held within fourteen days, Ho's counsel, fearing that our order might be

construed as barring his injunction application, sought a qualification of that order. Actually there was no necessity for any qualification because the purpose of the order was merely to facilitate the holding of the second EGM since it was not held on the date originally fixed, 14 July 2004, and there was, so to speak, a break in the processes for the holding of it. The order was not intended to prevent any person from seeking any order in respect of the second EGM if there were valid grounds for it. This would be clear if we did not make the facilitating orders but left the continuation of the second EGM to the devices of the organisers. Then there would be no question of any one with valid reasons being barred from seeking orders in respect of the second EGM. The existence of the facilitating orders ought not to alter the position. But for the avoidance of doubt, we felt it necessary, in order to allay the fears of Ho, to declare that the order as to the holding of the second EGM was not intended to bar the making of any order that 'any court may think fit to make', whether under Ho's oppression petition or under any other action, to restrain the second EGM, or the making of any order ancillary to such order. The decision to make the declaration was a majority decision, my learned brother Datuk Wira Hj Mohd Ghazali dissenting in that respect.

Mohd Ghazali JCA (dissenting judgment):

[25] I have had the benefit of reading the judgment of my learned brother Abdul Aziz JCA in draft with which I agree save as to the qualification made by him in respect of the intervener/respondent Ho Hee Chung.

[26] In my respectful view, the result of the appeal in this case has no effect upon any remedy that the said Ho Hee Chung might seek in the High Court in his application under s 181 of the Companies Act 1965 and such no qualification to the orders we made on the appeal is necessary. This is indeed conceded by my learned brother in para 18 of his draft judgment. While the reasoning found therein sounds plausible, I found myself dissenting wholly from it with great respect. In my respectful view this court should not act in vain by making unnecessary qualifications that may be perceived as directions from this court.

Appeal dismissed.

Reported by AG Kalidas